IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1269/2005
(Tejmal & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 23/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.K.Rastogi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Usman Ghani for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the orders dated 13.10.2005 and 28.10.2005 passed by Additional District Magistrate (City), Bhilwara (for short 'the Executive Magistrate' hereinafter) on an application filed by non-petitioner No.2 under Section 133 and 142 Cr.P.C.

I have heard learned counsel for the parties. Carefully gone through the orders impugned.

The non-petitioner No.2 filed a complaint under

Section 133 Cr.P.C., alleging therein that there is a street of 10 to 13 feet in Subhash Market in which the non-petitioner is running his business and opposite to his business establishment, there is a restaurant of the petitioners. The petitioners have installed Air Conditioner projecting in the street and therefore, it creates nuisance and same may be directed to be removed.

By order dated 13.10.2005, an interim order was passed by the Executive Magistrate which was made absolute by order dated 28.10.2005 directing the petitioners to remove the Air Conditioners/compressor/ big fans etc. from the street.

I have heard learned counsel for the parties.

Learned counsel for the non-petitioner submits that after passing of the orders impugned, two Air Conditioners have been removed by the petitioners and installed at a height in their building and only one Air Conditioner is remained at the place where at the time of passing of the order it was installed.

Keeping in view the fact that the Air Conditioner has been installed by the petitioners in their own building and it is normal practice that whenever Air Conditioners are installed, they are to project outside and therefore, in a lane of 10 feet

width if an Air Conditioner is installed, it cannot be said that by installing the Air Conditioner the petitioners have created any nuisance. In the circumstances, therefore, the orders impugned deserve to be set aside.

In the result, the petition is allowed. The order dated 13.10.2005 passed by the Executive Magistrate and the order dated 28.10.2005 affirming the order dated 13.10.2005, are set aside. The Executive Magistrate shall decide the main application filed by the non-petitioner No.2 under Section 133 Cr.P.C. utmost expeditiously. Stay petition also stands disposed of.

(H.R.PANWAR),J.

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